

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the Off-
Highway Motorcycle Citations Issued to
Tyler Glenn Swaser

NOTICE OF PREHEARING
CONFERENCE AND NOTICE OF
HEARING

Citation Nos. 73194-96

PLEASE BE ADVISED that a prehearing conference will be held by telephone conference call on August 10, 2004, beginning at 1:30 p.m. and continuing as long as necessary.

Participating in the prehearing conference telephone call will be Kathleen D. Sheehy, the undersigned Administrative Law Judge, whose office is located at 100 Washington Square, Suite 1700, Minneapolis Minnesota 55401-2138, and whose telephone number is (612) 341-7602; the officer who issued the citation, Cons. Officer Karl Hadrits, whose home telephone number I have; and the appellant herein, Tyler Swaser, whose telephone number is (651) 453-0421. If it is necessary to change the time or use a different telephone number for either Officer Hadrits or Mr. Swaser, please contact me immediately at the telephone number above.

The purpose of the prehearing conference telephone call is to determine the nature of the dispute that caused the appeal, and to determine the best way to resolve it. The telephone call is expected to last about fifteen (15) minutes, and no more than thirty (30) minutes. If the appeal cannot be resolved during the telephone call itself, then the Judge will set a time for a hearing. The Judge will also decide whether the hearing shall be held by telephone or in person.

The civil citations being appealed were issued pursuant to Minn. Stat. § 84.795, subd. 1; § 84.788, subd. 3; and § 84.793, subd. 2. Minnesota Statute section 84.775, subd. 1, permits a conservation officer to issue a civil citation to a person who operates an off-highway motorcycle in violation of these sections. Subdivision 2 of that statute provides that if a person requests a hearing in order to appeal a citation, the hearing shall be held pursuant to procedures set forth in section 116.072. That statute in turn provides an expedited administrative hearing process, and refers to Minnesota Rules, parts 1400.8510 to 1400.8612. These are the rules that will govern the conduct of this appeal. Copies of the above-referenced statutes and rules may be obtained from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155. Statutes and rules may also be found at county law libraries and many other public libraries in the State. The statutes may also be found using the Internet at www.revisor.leg.state.mn.us/stats/. The rules may be found at www.revisor.leg.state.mn.us/arule/.

It is not necessary that a person have an attorney in order to participate in this case. They may, however, choose to be represented by legal counsel or any other representative of their choice.

Unless the Administrative Law Judge decides differently, the only participants in the prehearing conference telephone call will be Conservation Officer Hadrits and Tyler Swaser and a parent, if desired. If a hearing is necessary, they will be the only "parties." Any other person who desires to become a party to this case must submit a timely petition to intervene pursuant to Minn. Rules pt. 1400.8570. This petition must show how that person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought, and shall indicate petitioner's statutory right to intervene if one should exist. If the petition is granted, and the petitioner is given full party privileges, then the petitioner will have the right to present evidence and witnesses, and will also have the right to question witnesses presented by the other parties. Even without filing a petition to intervene, any person may offer testimony or other evidence which is relevant to the case, but they are subject to being questioned by the parties. Generally, non-parties are not allowed to question witnesses provided by the parties.

If a hearing is held, the Administrative Law Judge and the Commissioner can base their decision only on factual information or evidence that is part of the hearing record. Persons participating in the hearing should have available all documents, records, witnesses and any other evidence they need to present their position. Subpoenas may be available to compel the attendance of witnesses or other production of documents. See Minnesota Rules pt. 1400.8601 for the procedures regarding subpoenas.

If a Hearing is held, once it is completed the Administrative Law Judge will issue a recommended decision. A copy will be sent to each party and to the Commissioner. After allowing at least five days to pass, the Commissioner will issue a final order. During the five-day period, the parties may file comments with the Commissioner regarding the recommended decision.

Failure to participate in the prehearing conference telephone call or failure to appear at the hearing will result in the citation being upheld and the fine will have to be paid within thirty (30) days of the issuance of the Commissioner's final decision, with no further opportunities for administrative appeal.

It is likely that an appeal hearing will cost the taxpayers more than the amount of the fine imposed by the citation. Appeal hearings should be limited to cases where there is a legitimate, good faith disagreement about the facts or the law. The statute (§ 116.072, subd. 6(d)) provides that if the Administrative Law Judge finds that a hearing was requested solely for purposes of delay or that the hearing request was frivolous, the costs of holding the hearing may be added to the amount of the fine.

Questions concerning settlement of this matter may be directed to the Administrative Law Judge at 612/349-2542 or Pat Watts, Policy/Legal Analyst, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4047, telephone (651) 296-4883.

Dated this 29th day of July 2004.

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge